

From: James Powell
To: Microsoft ATR
Date: 1/23/02 10:25pm
Subject: Re: U.S. v. Microsoft: Settlement Information

Dear D.O.J.,

I would like to submit my comments about the Proposed Final Judgement.

As recommended by the D.O.J., I have read the original Complaint (5/18/1998), the Stipulation and Revised Proposed Final Judgement (11/06/2001) and the Competitive Impact Statement (11/15/2001).

I am unable to believe that the remedies in the PFJ will prevent Microsoft from maintaining its operating system monopoly. The PFJ appears to me to have no teeth.

To me, the heart of the issue is Microsoft's ability to determine de-facto standards. These standards include word processing and spreadsheet file formats, which Microsoft, under the PFJ, retains the ability to manipulate in secrecy in order to block competition.

These standards also include the interfaces used by Microsoft products such as Word and Excel to carry out their functions. As shown in the courts proceedings, Microsoft has repeatedly and secretly changed these APIs in order to disable or cause malfunctions in competing software. The PFJ does require that Microsoft make some APIs public, but the definition of API in the PFJ is so limited that there can be no expectation that Microsoft will not continue to cripple competitors using this dirty trick.

I think that it's unfortunate that patents covering the Windows API are allowed to remain undocumented. This prevents potential competitors from implementing products which are compatible with the de-facto standard PC operating system API without risking patent infringement. The patents are especially a problem because it is well documented that the U.S. Patent and Trademark Office has issued many software patents without adequately determining the novelty of the proposed invention. Please read 'Intellectual Improprieties' in Scientific American magazine's February 2002 issue, p. 34 for more information about this problem.

Besides the issue of standards, there is the question of Microsoft's practice of using OEM licensing agreements to suppress competition. This section of the PFJ is apparently very weak by design. It contains language that actually encourages Microsoft to increase its market share by allowing the company, which is guilty of engaging in illegal practices to suppress competition, to go ahead and dictate different licensing terms to smaller OEMs - precisely the OEMs who are most likely

to encourage competition with Microsoft (Section III.B), and by permitting Microsoft to retaliate against any OEM who ships computers containing no Microsoft operating system (Section III.A.2).

Considering these problems, I feel that the the Proposed Final Judgement as written will have very little effect on Microsoft and I am certain that significant anticompetitive practices will continue at the company. The Proposed Final Judgement is not in the public interest, and it should not be adopted without addressing these issues.

As a personal amendment, I am a software developer. I started developing software in 1982 at the age of 13. I worked in computer stores for four years, from 1984 to 1987, and I have been a professional software developer since 1988 starting as a student in college where I worked for the University of Chicago's Graduate School of Business.

The computer industry in the 1980s was a wonderful market, full of innovation. Spreadsheets, word processors, desktop publishing programs, games, and operating systems all enjoyed significant competition and the consumer benefited from a bounty of choice and variety. Standards such as SGML (the basis of HTML), ANSI C, and POSIX were refined and adopted and the end user benefited from consistent implementation of these standards. Products improved in functionality and reliability and prices were kept low by market forces.

I enjoyed using Microsoft products, purchasing Multiplan, Word, and MS-BASIC for the Macintosh. The first sign of trouble that I noticed was when Apple was developing a really good BASIC development environment for the Mac, called MacBasic, in 1985. Preview versions of this software were available and it was obviously much better than the MS-BASIC product. Apple had poured a lot of resources into MacBasic and was poised to release the product when Microsoft stepped in. This is the first application of Microsoft's famous and frequently used 'Apple-submit or we will no longer make products which run on the Macintosh' tactic that I know of. Apple submitted and sold MacBasic to Microsoft for \$1. MacBasic was buried and Microsoft continued to sell its inferior product, without updating it or addressing its limitations at all for years.

Finally, even MS-BASIC disappeared from the market and consumers were left without a useful BASIC programming environment on the Macintosh.

There are so many stories like this that I know that Microsoft has significantly and intentionally damaged the personal computer market. Microsoft continues to do so today by shipping broken products to so many people that massive security flaws and unstable systems are now considered the norm by many.

Programmers know that this perception is dangerous and untrue. Better

practices and better operating systems have existed since the 1970s, but they are unable to gain a foothold in the PC market because Microsoft uses unfair practices to maintain the Microsoft monopoly on that market.

The other reason I feel strongly about this issue is that it is clear to anyone who has been involved with the industry since the early eighties that the software market has collapsed into an uninteresting, low quality blob. Strong companies shipping strong products, such as Word Perfect, Harvard Graphics, Borland, Netscape, Corel, Digital, Ashton-Tate, Lotus, Eudora, and IBM have all attempted to sell products which compete with Microsoft applications and they all now lie strewn in the dust, crushed by monopoly power.

Apple, Sun, and free software are the only hope I have today for freedom of choice in desktop computing. I feel that Microsoft will eventually fall, because end users still have freedom of choice and free software will replace Microsoft products on the desktop. This may take decades to accomplish and many millions of computer users will be deprived of choice until that day.

I believe that the PFJ as written will not accelerate this process, nor will it significantly improve the situation for commercial competition to Microsoft. As a computer professional and as a citizen of the United States, I urge the D.O.J. NOT to adopt the proposed final judgement without amendment.

Thank you,

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